

SENATE RECORD VOTE ANALYSIS

106th Congress
1st Session

Vote No. 137

May 20, 1999, 5:26 p.m.
Page S-5691 Temp. Record

JUVENILE JUSTICE/Same Rules for Disabled & Non-Disabled Armed Students

SUBJECT: Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999 . . . S. 254.
Frist/Ashcroft amendment No. 355.

ACTION: AMENDMENT AGREED TO, 75-24

SYNOPSIS: As introduced, S. 254, the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999, will modernize Federal grant programs that give aid to State and local governments for juvenile law enforcement and juvenile crime prevention efforts. Approximately \$1 billion per year for the next 5 years will be authorized for those grant programs. Also, \$100 million annually will be authorized for joint Federal-State-local efforts to address gang-related juvenile crime.

The Frist/Ashcroft amendment would add the School Safety Act of 1999. That Act would permit school personnel to discipline a student with a disability in the same manner that a student without a disability would be disciplined if that student intentionally carried a firearm to or at a school, on school premises, or to or at a school function. A student with a disability who was expelled or suspended for one of the above firearm infractions would not be entitled to continued educational services during the period of expulsion or suspension if a student without a disability expelled or suspended for the same offense would not be entitled to such services in the State in which the expulsion or suspension occurred. A local educational agency could provide educational services if it so chose, at the time and in the manner in which it chose, without establishing a right to the provision of those services. A firearm for purposes of this amendment would be defined to include bombs. (The Individuals with Disabilities Education Act (IDEA) limits the ability of States to discipline students with disabilities who bring guns or bombs to school in the same way they discipline other students who bring guns or bombs to schools. Under the IDEA, a student with a disability may only be removed from his or her classroom for 10 days before special rules apply. After 10 days, to continue the removal of such a student, educational services must be provided in an alternative educational setting that is the "least restrictive" possible setting. In practice, that has usually meant that the student has been put in a different room in the same school. The student's Individualized Education Plan (IEP) team, headed by an independent hearing officer, decides upon the setting. The student may be kept in such

(See other side)

YEAS (75)			NAYS (24)		NOT VOTING (1)	
Republicans (51 or 94%)	Democrats (24 or 53%)		Republicans (3 or 6%)	Democrats (21 or 47%)	Republicans (1)	Democrats (0)
Abraham	Hutchinson	Baucus	Chafee	Akaka	McCain ⁻²	
Allard	Hutchison	Bayh	Crapo	Boxer		
Ashcroft	Inhofe	Biden	Jeffords	Cleland		
Bennett	Kyl	Bingaman		Daschle		
Bond	Lott	Breaux		Durbin	EXPLANATION OF ABSENCE: 1—Official Business 2—Necessarily Absent 3—Illness 4—Other SYMBOLS: AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	
Brownback	Lugar	Bryan		Feingold		
Bunning	Mack	Byrd		Harkin		
Burns	McConnell	Conrad		Hollings		
Campbell	Murkowski	Dodd		Inouye		
Cochran	Nickles	Dorgan		Kennedy		
Collins	Roberts	Edwards		Lautenberg		
Coverdell	Roth	Feinstein		Leahy		
Craig	Santorum	Graham		Mikulski		
DeWine	Sessions	Johnson		Moynihan		
Domenici	Shelby	Kerrey		Murray		
Enzi	Smith, Bob	Kerry		Reed		
Fitzgerald	Smith, Gordon	Kohl		Reid		
Frist	Snowe	Landrieu		Sarbanes		
Gorton	Specter	Levin		Schumer		
Gramm	Stevens	Lieberman		Wellstone		
Grams	Thomas	Lincoln		Wyden		
Grassley	Thompson	Robb				
Gregg	Thurmond	Rockefeller				
Hagel	Voinovich	Torricelli				
Hatch	Warner					
Helms						

Compiled and written by the staff of the Republican Policy Committee—Larry E. Craig, Chairman

a setting for no more than 45 days unless another hearing is held and the hearing officer extends the period for another 45-day increment. A school may also conduct a manifestation determination to determine if there is a link between the student's bringing a bomb or gun to a school and the student's disability. If there is not any link, then the student may be expelled, but the school is obligated to continue providing educational services to that student. If a manifestation determination finds that there is a link, the student may not be expelled under any circumstances. Education may continue to be provided in an alternative setting to the regular classroom so long as the hearing officer continues to provide 45-day extensions. Hearings must be held for each extension. In contrast, students without disabilities who bring guns or bombs to schools are automatically expelled in every State for a minimum of 1 year. All States have that policy in part because Federal assistance for public education is conditioned on their requiring a minimum 1-year expulsion for students without disabilities who bring guns or bombs to school.)

Those favoring the amendment contended:

The Jeffords/Frist amendment has been offered to close a loophole in Federal law that is putting the lives of students and teachers at risk. That loophole makes it very difficult for schools to expel dangerous, armed students if they have been labeled as having disabilities. Students without disabilities are immediately expelled for bringing guns or bombs to school; students with disabilities, though, may not be expelled if their actions are ruled to be "manifestations" of their disabilities, and, even if a school is able to prove to some hearing officer's satisfaction that the student's action has nothing to do with his or her disability, a cumbersome process must be followed that leaves students and teachers at risk in the interim.

Roughly 14 percent of all students in America are classified as having disabilities. Those disabilities cover a very wide range of physical, emotional, and mental problems, and they range widely in degree as well, from slight problems in learning to read to severe emotional problems that result in dangerous and unpredictable behavior. As a general rule, those students should be given as mainstream an education as possible, no matter what types or degrees of disabilities that they may have. However, that rule cannot and should not be absolute. In particular, the right for a student with a disability to receive as mainstream an education as possible cannot be given at the price of putting the lives of other children and teachers at risk. Children with disabilities who intentionally bring guns or bombs to school should be expelled, without exception, just as other students are. Due to Federal law, they are not.

We have had difficulty quantifying the extent of the problem. Obviously, most of the millions of American students with disabilities, just as most students without disabilities, will never bring guns or bombs to school. We are talking about a very small, dangerous minority of students in both cases. All of the evidence that we have seen regarding students bringing firearms or bombs to schools, and all of the testimony that we have heard from school boards, though, show that the potential of disaster from this tiny percentage of students is huge. In Nashville, Tennessee, for instance, we know that in the 1997-1998 school year eight students brought guns to school, six of whom were special education students. The two without disabilities were immediately expelled. For the other six, the school district had to put them in the least restrictive alternative educational settings picked by their IEP teams (which are headed by independent hearing officers, who work closely with the families of the students they oversee and typically end up serving as advocates for the desires of those families). They then had to go through the process of manifestation determinations. In three of the cases, the hearing officers said that the students' actions in bringing guns to school were manifestations of their disabilities. Within 45 days, those three students who had brought guns into school were back in their regular classrooms. The schools had no choice under Federal law but to comply. These actions took place under the rules of the IDEA law as it was amended 2 years ago. Our colleagues have falsely suggested that the amended version of that law took effect only 2 months ago, but in reality it took effect on enactment and States have been following the amended version for the past 2 years.

The situation in Nashville is not unique. We have heard similar stories from schools in States all around the country. For instance, in Fairfax County, Virginia, school officials recently learned that a group of six students had a loaded .357 magnum on school property. A .357 magnum is an extremely powerful, high-caliber handgun. Five of those students were immediately expelled. The sixth, though, was a special education student because he had been diagnosed as having a "weakness in written language skills." School officials reported that the student then bragged to teachers and other students that he could not be expelled because he was in special education. Many Senators, and many Senate staff members, have children in Fairfax County schools because that county is adjacent to Washington, D.C. Some of them may have children in the same school as this student who believes he can get away with bringing a .357 magnum to school anytime he pleases.

Our colleagues have given us a hypothetical example of how unfair this amendment would be in practice. They have suggested that bullies may threaten to harm a retarded student unless he brings them one of his father's guns and that the retarded student may do so out of fear for his life. In that case, they ask us if we should really expel that student. In response, we note first that the hypothetical example is quite a bit different than all of the real life examples we have heard of, and, second, we say yes, that child should be expelled. It is just as easy to draw the same types of examples for students without disabilities. Suppose a very bright, studious, teenage boy is constantly harassed by members of a gang. Suppose those gang members tell that boy that they are going to seriously harm or kill him. That boy has no proof of the threats, so he cannot get the school or police to take any action. If that boy brings a gun to school to protect himself, and if he is caught with that gun, should he be expelled? Under Federal law, the

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answer is yes. Schools must have a zero tolerance policy for guns, regardless of the circumstances.

The point of this amendment is that our overriding concern must be to protect the lives of students and teachers. Special rules to protect the rights of children with disabilities, which we ordinarily support, must not be allowed to override our fundamental responsibility to keep schools safe. Some Senators, rather than listening to the arguments on this amendment, have just assumed malevolent motives and have stated that schools are only interested in trying to avoid the expense of educating special education students. This statement is not only insulting, it is obviously false. Certainly it is true that it is very expensive to provide educations to children with disabilities according to the strict dictates of the byzantine and extensive Federal mandates that have been imposed, and certainly it is true that it is expensive to go through all of the regulatory and legal hoops that are required to try to prove that a child who brings a gun to school did not do so because of some disability. For instance, school officials have told us that at a minimum it costs them \$7,000 to go through just one hearing before an IEP hearing officer. However, we remind our colleagues that this amendment, if adopted, would not even make a scratch in the total costs States incur from special education. Only a minuscule percentage of special education students ever intentionally bring guns or bombs to school. This amendment obviously is not about saving money, it is about saving lives.

The final argument against this amendment is that no special education student has shot and killed anyone on school grounds within the last couple of years. What are our colleagues saying? They are not willing to address a dangerous situation that exists until some child is murdered? Under Federal law, we have created a dangerous loophole that is resulting in students, within a couple of weeks of their having threatened other students and their teachers in class with guns or bombs, being put right back in those same classrooms. Students and teachers are in the same amount of danger when they are threatened with murder by armed students with disabilities as they are when they are threatened by armed students without disabilities. Our first concern must be safety. All students who intentionally bring guns or bombs to school should be treated equally--they should be expelled. The Frist/Ashcroft amendment would provide for this equal treatment. We strongly support this amendment.

Those opposing the amendment contended:

This amendment would perpetuate the old stereotype that children with disabilities present a danger to other children. Due to a belief in that stereotype, this amendment would remove special protections for children with disabilities who have brought guns or bombs to school. We think that one of the main reasons for removing those protections is to save the States money when dealing with such students. We do not put the States' interest in saving money ahead of the interests of children with disabilities. The current system for dealing with children with disabilities who bring guns or bombs to school is working perfectly both to protect those children's rights and to protect other students and teachers from harm.

The reality is that kids with special needs are the ones who are in danger from "normal" children. They are picked on; they are taunted; they are physically harmed. Under this amendment, though, the assumption would just be made that when they brought guns or bombs to school, they did so because they were dangerous and they should be kicked out of school. No consideration would be given to the circumstances; no effort would be made to find out if they were really dangerous or if they were just being victimized. For instance, a child with an IQ of 60 could be told by other students that if he did not bring one of his father's guns to school and give it to them they were going to cut off his ears. If that child, terrified, then brought the gun to school and was caught, he would be expelled. Would that be just?

Certainly, for the school, it would be much more convenient than going through all of the expense and trouble of holding hearings and paying for manifestation determinations. The costs of providing special education are very high, and schools across the country would be delighted if they were given a way to expel some special education students, no questions asked. A series of court cases have determined that States must provide appropriate, free educations to children with disabilities if they provide free educations to other children, and the Federal Government has wisely established detailed, uniform requirements for the States to follow in educating children with disabilities. If those requirements did not exist, States would cut corners to save money.

The current, albeit expensive, law is working well to protect disabled children, and it is doing so without putting any other children at risk. We amended the IDEA a couple of years ago to allow students whom an independent hearing officer determines are dangerous to be educated in alternative educational settings for as long as that hearing officer believes is necessary. Our colleagues have imagined all sorts of problems that may occur, but the reality is that no disabled education students have been involved in the 9 school shootings of the past 2 years. In other words, the hearing officers are doing a very good job of segregating the truly dangerous students with disabilities from situations in which they may cause harm. Further, we note that all of the examples our colleagues have given of students being put back into the classroom within 45 days of their having brought guns into those classrooms occurred before the regulations went into effect allowing for indefinite placement in alternative settings.

Our colleagues are simply wrong about the danger that they imagine exists from children with disabilities. These kids need all of the special protections that they have under current law, because without those protections they will be abused. This amendment should be rejected.